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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/803,245	03/18/2004	Steven William Hoffman	CCF-6332NP	5966

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1300 EAST NINTH STREET, SUITE 1700
CLEVEVLAND, OH 44114

EXAMINER

NGUYEN, VI X

ART UNIT	PAPER NUMBER
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3734

MAIL DATE	DELIVERY MODE
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10/06/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/803,245	Applicant(s) HOFFMAN, STEVEN WILLIAM	
	Examiner Victor X. Nguyen	Art Unit 3734	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) 27-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11, 14-17, 21-24 and 26 is/are rejected.
- 7) ☒ Claim(s) 12, 13, 18-20, 25 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-11,14-17,21-24 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Hoogetboom (5,928,263).

Hoogetboom discloses a device 10 for insertion into a body lumen having the limitations as recited in the listed claims, including: an elongate member 12 has proximal and distal end, at least one clamping arm 18 includes a first end (the first end locates to the right side of element 18b) having a pivotal connection with the distal end of the elongate member, where the clamping arm extends away from the pivotal connection, where control means 20 for controlling the pivotal movement of the clamping arm, where the control means connects with the at least one clamping arm, and where the clamping arm has a second end (the second end locates from the tip of element 18b) which is opposite the first end, where the clamping arm when in the open position forms a receptacle (the receptacle is the space between 18a and 18b), where the receptacle for receiving an object, for-example, a stent, a foreign object or a tissue sample. Regarding the intended use "a receptacle for receiving an object" The statement of intended use and other functional statements have been carefully considered but are deemed not to impose any structure limitations on the claims distinguishable over Hoogetboom reference which is capable

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of being used as claimed if one desires to do so. Where the clamping arm includes a plurality of teeth (the teeth occurs along segment 126, 128) to grip the object, where the device further has a spring 148, where the control means 20 comprises a control mechanism and connecting means which is a cable 30 for connecting the control mechanism with the clamping arm, and where the device further has a releasable locking means at 156 for locking the at least the control arm, and where the clamping arm when in the open condition has an acute angle relative to the longitudinal axis of the elongate member at best seen in fig. 2.

Allowable Subject Matter

2. Claims 12-13,18-20 and 25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

Response to Arguments

3. Applicant's arguments filed 6/3/2008 have been fully considered but they are not persuasive. In response to applicant's argument that Hoogetboom does not teach an apparatus having a clamping arm that extends away from a pivotal connection towards the proximal end of an elongate member (an intended use limitation): It is noted that Hoogetboom discloses a device 10 for insertion into a body lumen including: an elongate

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member 12 has proximal and distal end, at least one clamping arm 18 includes a first end (the first end locates to the right side of element 18b) having a pivotal connection with the distal end of the elongate member, where the clamping arm extends away from the pivotal connection. Thus, a reference needs not show the structure of the recitation in order to meet the claim language but rather the reference needs only be capable of being used with such structure. (See MPEP 2106 and MPEP 2111.04). Accordingly, the above note reference is still considered to read on the claimed limitations of the claims noted.

Conclusion

4. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor X. Nguyen whose telephone number is (571) 272-4699. The examiner can normally be reached on M-F (8-4.30 P.M).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ho Jackie can be reached on (571) 272-4697. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kevin T. Truong/
Primary Examiner, Art Unit 3734

/Victor X Nguyen/
Examiner
Art Unit 3734

VN
9/29/2008